

REMARKS

This response is submitted in reply to the Office Action mailed March 18, 2008 ("the Action"). Claims 43-88 and 105-124 are pending in the application.

I. The Allowable Claims

Applicant acknowledges, with appreciation, the Examiner's statement at page 11 of the Action, that Claim 117 is allowed. Also, although not explicitly stated as allowed Claim 118 depends from Claim 117. Thus, Applicant submits that Claims 117 and 118 are allowed.

II. The Structural Limitations

The Action states at pp. 2-3, with respect to Claims 43, 105, 108-113 and 118-124, that the argument at pp. 26-29 of the Remarks of the prior response, "a processor that is programmed to provide a particular function is structurally different than other processor circuits that are programmed to provide a different function", that the features upon which Applicant relies are not recited in the rejected claims. Thus, the Action continues to reject the claims as being obvious over the cited prior art as it takes the position that such features are not "structural" and therefore that the product claims are not patentable over the cited prior art.

These affected claims recite that the processor is "configured to" perform certain functional operations. Applicant is attaching a copy of a Decision on Appeal from the Board of Patent Appeals and Interferences (BPAI) which states, *inter alia*, that "[t]he Examiner errs, however, in reading "configured to" as "capable of", i.e., the Examiner reads it as merely being limited to intended use." The claims in this application on appeal to the BPAI also recited that the "processor was configured to" and the BPAI agreed that the "configured to" language was consistent with the assertion that "a processor that is programmed to provide a particular function is structurally different than other processor circuits that are programmed to provide a different function." Applicant submits that the "configured to" language of the processor recitation is structurally analogous to the claim format of a processor that is

In re: Black et al.
Application No. 10/779,907
Filed: February 17, 2004
Page 17

programmed to provide a particular function. The attached BPAI decision and Applicant's previous arguments in the last response clearly support this position.

If the Examiner continues to believe that the claims are not in proper form, Applicant requests that the Examiner telephone the undersigned for an Interview to discuss suggested claim language to address this issue.

Claims 119-123 have been amended to recite the processor has computer readable medium with computer readable code rather than "configured to" and Claim 59 has been amended to recite the processor has computer program code that generates optical profile data to provide alternate claim format (these claim amendments are in no way to be interpreted as an admission that the "configured to" recitation does not provide the structural distinction over the cited prior art.)

CONCLUSION

Applicant respectfully submits that this application is now in condition for allowance, which action is requested. If any extension of time for the accompanying response or submission is required, Applicant requests that this be considered a petition therefor. The Commissioner is hereby authorized to charge any additional fee, which may be required, or credit any refund, to our Deposit Account No. 50-0220.

Respectfully submitted,



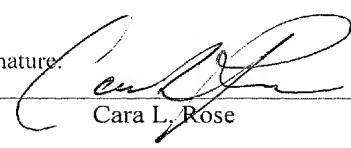
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CERTIFICATION OF TRANSMISSION

I hereby certify that this correspondence is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4) to the U.S. Patent and Trademark Office on June 3, 2008.

Signature:



Cara L. Rose